

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

Frank R. Ellerbe, III

1901 MAIN STREET, SUITE 1200 POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH (803) 779-8900 | (803) 227-1112 direct

FAX (803) 252-0724 | 1 (803) 744-1556 direct

fellerbe@robinsonlaw.com

September 16, 2009

VIA ELECTRONIC FILING

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Ra.

State Universal Service Support of Basic Local Service included in a Bundled Service Offering or Contract Offering Docket No. 2009-326-C

Dear Charlie:

Enclosed for filing is the Motion to Compel of the South Carolina Cable Television Association, CompSouth, NuVox Communications, and tw telecom to the Office of Regulatory Staff. By copy of this letter we are serving the same on Hearing Officer Butler and other parties of record.

Yours truly,

ROBINSON, McFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/bds

CC:

Commission Hearing Officer David Butler (via email & U.S. Mail) Other parties of record (via email & U.S. Mail)

Mr. Terreni September 16, 2009 Page 2

bcc:

Mr. Ray Sharpe (via email) Ms. Carolyn Ridley (via email) Ms. Susan Berlin (via email)

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE:) Motion to Compel of South Carolina) Cable Television Association,
State Universal Service Support of Basic Local Service Included in a Bundled Service Offering or Contract Offering	Compsouth, NuVox Communications, and tw telecom of south carolina llc)

BACKGROUND

The South Carolina Cable Television Association, Competitive Carriers of the South ("CompSouth"), NuVox Communications and tw telecom of south carolina llc (collectively "CLECs") hereby move pursuant to 26 S.C. Regs. 103-829, 103-833, and 103-835, Rule 26 of the South Carolina Rules of Civil Procedure, and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), that the Commission compel the South Carolina Office of Regulatory Staff ("ORS") to respond to Document Request 1-1 served as part of CLECs' August 13, 2009, discovery requests ("Discovery Requests"). Counsel for the CLECs has attempted to resolve this matter without the intervention of the Commission, but has been unsuccessful and therefore files this motion.

On August 13, 2009, counsel for the CLECs served ORS with its Discovery Requests (Exhibit 1) which included Request 1-1. Request 1-1 seeks documents submitted by Carriers of Last Resort ("COLRs") by which USF funds were requested. On September 2, 2009, ORS served its objections and

response to the Discovery Requests (Exhibit 2) and objected to producing any documents covered by Request 1-1. ORS objected to Request 1-1 on the grounds that (the documents were confidential and protected from disclosure by Orders of the Commission and (2) that the documents were not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Counsel for the CLECs contacted ORS to notify ORS that the CLECs were willing to enter into a confidentiality agreement with regard to the production of the material. The CLECs were unable to resolve the discovery dispute with ORS because of a disagreement over whether the documents requested in Request 1-1 are within the proper scope of discovery.

ARGUMENT

Commission Regulation 103-833 controls the broad scope of discovery. It provides that "[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." 26 S.C. Regs. 103-833.A (Supp. 2008). This language is similar to the scope of discovery defined in Rule 26 of the Federal Rules of Civil Procedure and explained by the U.S. Supreme Court:

[t]he key phrase in this definition-'relevant to the subject matter in the pending action'-has been construed broadly to encompass any matter that bears on, or that could reasonably lead to other matter that bear on, any issue that is or may be in the case...Consistently with the notice-pleading system established by the Rules, discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues...Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits.

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L.Ed.

2d 253 (1978) citing Hickman v. Taylor, 329 U.S. 495, 501 (1947).

The information sought in Request 1-1 is clearly within the proper scope of discovery. CLECs seek production of existing documents that are the actual documents used by COLRs to obtain their subsidy payments. ORS makes no argument that production of the documents is unduly burdensome; the documents exist and can easily be produced. They are highly relevant to this proceeding. The issue before the Commission is whether lines that are sold by COLRs as parts of bundles or contract offerings should be supported by the USF. Under the Commission's Guidelines, adopted in Order No. 2001-996, COLRs are required to submit certain information to the ORS in order to obtain USF funding. Part of the information required is each COLRs number of "eligible lines." See USF Administrative Procedures at p.3, approved in Order No. 2001-996. In the current proceeding CLECs contend that lines that are parts of bundles or contract offerings are not eligible lines. Presumably, the COLRs and ORS will contend that those lines are eligible lines. It is critical to the CLECs' ability to prepare for the hearing that they be able to see how the COLRs and ORS are currently reporting and accounting for COLRs' eligible lines. These documents are therefore highly relevant and should be produced.1

ORS also contends that the information sought is confidential and that it cannot release the data without further order from the Commission based on prior Commission orders. In this and prior proceedings related to the State USF,

¹ The documents sought in Request 1-1 are also public records covered by the Freedom of Information Act. See S.C. Code Section 30-4-10, et seq. While, under the Act, a public body may exempt documents like these from disclosure (see Section 30-4-40(a)(1)), CLECs submit that where these documents are the means by which certain companies obtain access to a state operated subsidy fund, disclosure should be favored, especially where confidentiality protections can be put in place to address the COLRs' legitimate concerns about competitive harm.

numerous parties have entered into protective agreements to disclose discovery information that is considered confidential and proprietary. In the present docket the CLECs have already entered into a confidentiality agreement with Embarq and are negotiating a confidentiality agreement with Windstream. As indicated in a letter to Hearing Examiner Butler dated September 10, 2009, CLECs do not oppose Windstream's motion for a protective order and request for confidential treatment of the discovery responses.

CONCLUSION

CLECs request that the Commission grant their motion to compel requiring ORS to produce the requested data under an appropriate protective order for confidential or proprietary material. This remedy would protect confidential information from public disclosure while at the same time allowing the CLECs full access to the relevant data it seeks from ORS. See Hamm v. S.C. Public Serv. Com'n, 312 S.C. 238, 439 S.E.2d 852 (Sup. Ct. 1994).

WHEREFORE, the CLECs move this Commission to compel ORS to provide the responses to discovery request 1-1 and such other relief as the Commission may deem proper.

Dated this 16th day of September, 2009.

ROBINSON, MCFADDEN & MOORE, P.C.

FRANK R. ELLERBE, III
BONNIE D. SHEALY
POST OFFICE BOX 944
COLUMBIA, SC 29202
TELEPHONE (803) 779-8900
FELLERBE@ROBINSONLAW.COM
BSHEALY@ROBINSONLAW.COM

COUNSEL FOR SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, COMPSOUTH AND tw telecom of south carolina llc

AND

JOHN J. PRINGLE, JR.
ELLIS LAWHORNE & SIMS, P.A.
POST OFFIC BOX 2285
COLUMBIA, S.C. 29202
TELEPHONE (803) 343-1270
JPRINGLE@ELLISLAWHORNE.COM

COUNSEL FOR NUVOX COMMUNICATIONS INC.

EXHIBIT 1



ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

Bonnie D. Shealy

1901 MAIN STREET, SUITE 1200 POST OFFICE BOX 944

COLUMBIA, BOUTH CAROLINA 29202

PO

(803) 779-8900 ((803) 227-1102 direct FAX (803) 282-0724 (803) 744-1551 direct

bsheatv@robinsonlaw.com

August 13, 2009

VIA ELECTRONIC FILING

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: State Universal Service Support of Basic Local Service Included in a

Bundled Service Offering or Contract Offering

Docket No. 2009-326-C

Dear Mr. Terrini:

Enclosed for filing please find the Discovery Requests to the Office of Regulatory Staff and Requests to Carriers of Last Resort on behalf of South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and NuVox Communications, Incorporated. By copy of this letter we are serving the same on all parties of record.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealv

/bds enclosure

cc/enc:

Parties of record (via email and U.S. Mail)

David Butler, Hearing Examiner (via email and US Mail)

John J. Pringle, Jr., Esquire (via email)

Mr. Ray Sharpe (via email)
Ms. Carolyn Ridley (via email)
Ms. Susan Berlin (via email)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE:) SOUTH CAROLINA CABLE TELEVISION ASSOCIATION,
State Universal Service Support of Basic Local Service Included in a Bundled Service Offering or Contract Offering	COMPSOUTH, tw telecom of south carolina lic, AND NUVOX COMMUNICATIONS INCORPORATED DISCOVERY REQUESTS TO OFFICE OF REGULATORY STAFF

TO: NANETTE S. EDWARDS, ESQUIRE, ATTORNEY FOR OFFICE OF REGULATORY STAFF:

Pursuant to 26 S.C. Regs. 103-833 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), the South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and Nuvox Communications Incorporated (collectively "CLECs") request that the Office of Regulatory Staff ("ORS") respond to the following interrogatories and/or requests for production within twenty days of service:

NO. 1-1

Please provide copies of any and all documents submitted by the Carriers of Last Resort ("COLR") to ORS in regard to the COLRs' requests for distributions from the South Carolina Universal Service Fund for each of the years 2005 through the present. The requested documents include, but are not limited to, the South

Carolina Annual Universal Service Fund ILEC Data Report and the South Carolina State USF Per Line Support Calculation.

NO. 1-2

Please provide copies of any and all documents submitted by the Carriers of Last Resort ("COLR") to the Commission in regard to the COLRs' requests for distributions from the South Carolina Universal Service Fund for each of the years 2001 through 2005 which were physically transferred to ORS as a result of Order No. 2005-7 which designated ORS as the Administrator of the Fund. The requested documents include, but are not limited to, the South Carolina Annual Universal Service Fund ILEC Data Report and the South Carolina State USF Per Line Support Calculation.

NO. 1-3

Please provide a summary of the South Carolina Universal Service Fund Distributions to COLRs for each of the years 2001 through the present including the total annual amount of Universal Service Fund distributions provided to each COLR by year.

Dated this 13 day of August, 2009.

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy
Post Office Box 944
Columbia, SC 29202
Telephone (803) 779-8900
bshealy@robinsonlaw.com

COUNSEL FOR SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, COMPSOUTH AND tw telecom of south carolina IIc

AND

JOHN J. PRINGLE, JR.
ELLIS LAWHORNE & SIMS, P.A.
P.O. BOX 2285
COLUMBIA, S.C. 29202
TELEPHONE (803) 343-1270
JPRINGLE@ELLISLAWHORNE.COM

COUNSEL FOR NUVOX COMMUNICATIONS INCORPORATED

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE:))
State Universal Service Support of Basic Local Service Included in a Bundled Service Offering or Contract Offering	CERTIFICATE OF SERVICE CONTROL
)

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the DISCOVERY REQUESTS TO OFFICE OF REGULATORY STAFF ON BEHALF OF THE SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, COMPSOUTH, tw telecom of south carolina, IIc, AND NUVOX COMMUNICATIONS INCORPORATED in the foregoing matter by placing a copy of same in the United States Mail, postage prepald, in an envelope addressed as follows:

Nanette S. Edwards, Esquire Office of Regulatory Staff Post Office Box 11263 Columbia, SC 29211

Burnet R. Maybank, III, Esquire Nexsen Pruet, LLC PO Drawer 2426 Columbia, SC 29202

Patrick W. Turner, Esquire BellSouth Telecommunications, Inc. Post Office Box 752 Columbia, SC 29202

M. John Bowen, Jr., Esquire Margaret M. Fox, Esquire McNair Law Firm, P.A. P.O. Box 11390 Columbia, SC 29211

Scott A. Elliott, Esquire Elliott & Elliott 721 Olive Street Columbia, SC 29205 Steven W. Hamm, Esquire Richardson, Plowden, Carpenter & Robinson, PA 1900 Barnwell Street P.O. Drawer 7788 Columbia, SC 29202-7788

Benjamin P. Mustian, Esquire Willoughby & Hoefer, P.A. 1022 Calhoun Street, Suite 320 Post Office Box 8416 Columbia, SC 29202

John M.S. Hoefer, Esquire Willoughby & Hoefer, P.A. 1022 Calhoun Street, Suite 320 Post Office Box 8416 Columbia, SC 29202

William R. L. Atkinson, Esquire Sprint Nextel Corporation 233 Peachtree Street, N.E., Suite 2200 Atlanta, GA 30303

Dated at Columbia, South Carolina this 13th day of August, 2009.

Sesle allen